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Nos. 14-556, 14-562, 14-571, 14-574

In the Supreme Court of the United States

JAMES OBERGEFELL, *et al.*, *Petitioners*,
v.
RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, *et al.*, *Respondents*.

VALERIA TANCO, *et al.*, *Petitioners*,
v.
BILL HASLAM, GOVERNOR OF TENNESSEE, *et al.*, *Respondents*.

APRIL DEBOER, *et al.*, *Petitioners*,
v.
RICK SNYDER, GOVERNOR OF MICHIGAN, *et al.*, *Respondents*.

GREGORY BOURKE, *et al.*, *Petitioners*,
v.
STEVE BESHEAR, GOVERNOR OF KENTUCKY, *et al.*, *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF AMICI CURIAE ORGANIZATIONS AND SCHOLARS OF GENDER-DIVERSE PARENTING IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

1. Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

2. Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

TABLE OF CONTENTS

QUESTIONS PRESENTED . . . i

TABLE OF AUTHORITIES iv

INTEREST OF *AMICI CURIAE* . . . 1

SUMMARY OF ARGUMENT 3

ARGUMENT 6

I. Compelling Evidence Shows that Children Benefit from the Unique Parenting Contributions of Both Men and Women, Providing a Rational and Compelling Basis for States to Continue to Exclusively Define Marriage as the Union of One Man and One Woman 6

A. Distinctive Maternal and Paternal Contributions Are Important to the Social and Emotional Development of Children . . 9

1. Distinctive Maternal Contributions to Social and Emotional Development . . . 9

2. Distinctive Paternal Contributions to Social and Emotional Development . . . 15

B. Distinctive and Complementary Maternal and Paternal Parenting Contributions Are Important to the Cognitive Development of Children 21

1. Distinctive Maternal Contributions to Cognitive Development 21

2. Distinctive Paternal Contributions to Cognitive Development . . . 23

C. The Man-Woman Definition of Marriage Promotes Mother-Father Parenting and Thereby Provides a Rational and Even Compelling Justification for the Laws at Issue Here 29

II. The Same Compelling Evidence that Provides a Rational and Compelling Basis for States to Define Marriage as the Union of One Man and One Woman Provides an Equally Rational and Compelling Basis for States to Decline to Recognize Out-of-State Same-Sex Marriages . 34

CONCLUSION 35

TABLE OF AUTHORITIES

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329 U.S. 187 (1946) 3

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760 F.3d 352 (4th Cir. 2014) . . . 34, 35

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are public-policy groups and scholars with interests and expertise in issues pertaining to child welfare and parenting. Because child-welfare and parenting lie at the heart of these cases, each amici has a significant interest in the Court's resolution of the questions presented here.

Amici include the following groups:

Amicus CitizenLink is a nonprofit cultural action organization that informs and inspires those who care deeply about issues affecting marriage and the family in the United States. The organization also serves an alliance of nearly 40 state-based Family Policy Councils, several of which have joined this brief. In particular, the Family Policy Councils that have joined this brief include: Alabama Policy Institute, Alaska Family Action, Center for Arizona Policy, The Christian Civic League of Maine, Citizens for Community Values, Coalition for Marriage and Family Education Fund, Colorado Family Action, Cornerstone Family Council, Delaware Family Policy Council, The Family Action Council of Tennessee, The Family Foundation, Family Heritage Alliance, Family Institute of Connecticut Action, The Family Leader, The Family Policy Council of West Virginia, Family Policy Institute of Washington, Florida Family Policy Council, Hawaii

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[1] Parties to these cases have consented to the filing of this brief, and letters indicating their consent are on file with the Clerk. Amici state that no counsel for a party authored this brief in whole or in part, and no person other than the amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Family Advocates, Indiana Family Institute, Louisiana Family Forum, Massachusetts Family Institute, Michigan Family Forum, Minnesota Family Council, Missouri Family Policy Council, Montana Family Foundation, Nebraska Family Alliance, New Jersey Family Policy Council, New Yorker's Family Research Foundation, North Carolina Family Policy Council, North Dakota Family Alliance, Palmetto Family Council, Pennsylvania Family Institute, Wisconsin Family Action.

Amicus Focus on the Family is a nonprofit religious corporation dedicated to helping families thrive. It has a unique voice as an international organization that has for 38 years carefully studied, written on, and been a contributor to the vast and rich academic literature on how family change is impacting individual and societal well-being. It also works directly with millions of people each year in a myriad of ways to build and sustain strong healthy families. Focus on the Family was also instrumental in helping establish many of the Family Policy Council amici herein, and continues to serve each of them today.

The following scholars also join this brief as Amici and are listed in alphabetical order:

David J. Eggebeen (Ph.D., Sociology, University of North Carolina) is an Associate Professor of Human Development and Sociology at Penn State University.

Jenet Jacob Erickson (Ph.D., Family Social Science, University of Minnesota) if a former Assistant Professor of Family Studies, Brigham Young University and is currently a full-time mother and freelance writer.

Catherine Pakuluk (Ph.D., Economics, Harvard University) is an Assistant Professor of Economics at Ave Maria University.

Joseph Price (Ph.D., Economics, Cornell University) is an Assistant Professor of Economics at Brigham Young University.

SUMMARY OF ARGUMENT

This Court has repeatedly affirmed the important role of gender diversity in our society, including in institutions of higher education that develop our Nation's future leaders and jury pools that dispense justice for those accused of crimes. *See United States v. Virginia*, 518 U.S. 515, 519-20 (1996) (invalidating government policies that excluded women from attending military college); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 718-19 (1982) (invalidating government policies that excluded men from attending nursing school); *Ballard v. United States*, 329 U.S. 187, 194 (1946) (discussing juries and noting that "a distinct quality is lost if either sex is excluded"). The same vital need for gender diversity exists in families—the place where the next generation of Americans are socialized. That is why laws affirming marriage as a man-woman union, which are designed to, among other things, promote gender diversity in parenting and family life, further compelling government interests and satisfy constitutional review.

Indeed, the overwhelming weight of evidence from the social sciences now demonstrates what was long assumed to be a true but unremarkable proposition: namely, that the direct, continual involvement of both a mother and a father in the home is ideal for the

child's development. Substantial evidence from the sciences of sociology, psychology, and biology show that gender-differentiated parenting is critical for human development, and that both mothers and fathers make irreplaceable contributions to childrearing. The unique paternal and maternal contributions to parenting are complementary, impacting children's social and emotional development as well as their cognitive development.

The distinctive maternal contributions to a child's social and emotional development in large part reflect the fact that mothers are biologically primed to provide nurturing care for infants and young children. Mothers tend to nurture their young children in ways that are conducive to creating a strong attachment relationship, providing children with a fundamental sense of security and giving them the foundation necessary for healthy identity formation. Mothers also maintain family cohesion and cultivate their children's social ties, connecting their children to members of their extended family and friends. In addition, mothers' natural facility for emotional expression and regulation aids them in the vital work of building children's capacity for emotional awareness. Mothers teach their children to identify and discuss their own emotions and to empathize with others. By teaching children to understand the emotions of others and process and regulate their own emotions, mothers provide their children with the necessary foundation for moral behavior in childhood and adult life.

Fathers also make distinctive contributions to the social and emotional development of their children. A wealth of social science evidence demonstrates that

fathers tend to roughhouse and engage in stimulating play with their children, which helps teach them to avoid violence and control aggression—important lessons that in turn enable children to form healthy relationships with their peers. Fathers also discipline less frequently than mothers, but are more consistent in applying predetermined consequences for particular actions. Indeed, the mere presence of a father in the home significantly reduces the likelihood that boys will engage in delinquent behavior. For boys, fathers also serve as role models by engendering a healthy respect for femininity, and that respect discourages compensatory masculinity and associated aggressive and violent behavior. For girls, an involved father reduces the likelihood of early sexual activity and teenage pregnancy, promotes self-esteem and a positive body image, and decreases the risk of eating disorders.

Abundant evidence from social science also indicates that fathers and mothers make important and unique contributions to the cognitive development of their children. In general, mothers have a natural capacity for interacting with their infant children in a way that provides precisely the right amount of stimulation required for the proper development of the infant's brain at any given time. Mothers also tend to engage in verbal communication with their children more frequently than fathers and are generally more teaching-oriented in their interactions, which cultivates children's language skills and develops their conceptual capacity.

Fathers, in contrast, contribute to cognitive development by virtue of their more hands-off and facilitative parenting style. Fathers tend to engage in

play that is both supervisory and stimulating, encouraging openness to new situations and promoting healthy risk-taking. In general, fathers also use a broader vocabulary when interacting with their children, which develops children's expressive-language abilities. In addition, fathers often engage in peer-like verbal play, which helps older children and adolescents relate to their peers and shape their sense of self. And fathers' use of more cognitively demanding language, together with their tendency to require children to demonstrate skills and learning, cultivates higher-level thinking and supports educational attainment and academic achievement.

The evidence of social science thus demonstrates that parenting by a mother and a father provides children with the optimal environment for their cognitive, social, and emotional development from infancy through adolescence. It is therefore rational and, indeed, compelling for the government to recognize and promote mother-father parenting by continuing to define marriage exclusively as the union of a man and a woman.

ARGUMENT

I. Compelling Evidence Shows that Children Benefit from the Unique Parenting Contributions of Both Men and Women, Providing a Rational and Compelling Basis for States to Continue to Exclusively Define Marriage as the Union of One Man and One Woman.

A few decades ago Justice William Brennan recognized what was likely considered a very

unremarkable proposition when he stated that "the optimal situation for the child is to have both an involved mother and an involved father." *Bowen v. Gilliard*, 483 U.S. 587, 614 (1987) (Brennan, J. dissenting). Experts have long contended that both mothers and fathers make unique contributions to parenting. As sociologist David Popenoe explains, "[t]he burden of social science evidence supports the idea that gender-differentiated parenting is important for human development and that the contribution of fathers to childrearing is unique and irreplaceable." David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood and Marriage are Indispensable for the Good of Children and Society* 146 (1996). Even Professor Michael Lamb, a well-known advocate of same-sex marriage, supported this view before he became a proponent of redefining marriage to include same-sex couples. He stated in no uncertain terms that "[b]oth mothers and fathers play crucial and qualitatively different roles in the socialization of the child." Michael E. Lamb, *Fathers: Forgotten Contributors to Child Development*, 18 Human Dev. 245, 246 (1975). (This, of course, is not to mention the critical fact that it takes a mother and a father—whether directly involved or one step removed from the process—to bring a child into the world in the first place.)

Current research on the psycho-social development of children continues to affirm that the complementarity of an intact family, with a mother and a father serving unique relational roles, is optimal for a child's healthy development. *See, e.g.*, Ruth Feldman, *Oxytocin and Social Affiliation In Humans*, 61 Hormones & Behav. 380-391 (2012) (noting the

different roles that mothers and fathers play across species, the importance of those differences to human development, and suggesting that human oxytocin systems may account for the different yet complementary maternal and paternal functions). Even same-sex marriage supporters such as Dr. Lamb have admitted that men and women are not "completely interchangeable with respect to skills and abilities" and that "data suggests that the differences between maternal and paternal behavior are more strongly related to either the parents' biological gender or sex roles, than to either their degree of involvement in infant care or their attitudes regarding the desirability of paternal involvement in infant care." Trial Transcript at 1064 and 1068, *Perry v. Schwarzenegger*, 704 F Supp. 2d 921 (N.D. Cal. 2010) (No. C 09-2292 VRW). Dr. Lamb's statement is consistent with the weight of scholarship demonstrating that mothers and fathers make distinct but complementary contributions to childrearing, and that these unique paternal contributions and maternal contributions together are critical to positive child-development outcomes. *See generally* Jenet Jacob Erickson, *Fathers Don't Mother and Mothers Don't Father: What Social Science Research Indicates about the Distinctive Contributions of Mothers and Fathers to Children's Development* (2014), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2519862 (summarizing the relevant social-science research).

A. Distinctive Maternal and Paternal Contributions Are Important to the Social and Emotional Development of Children.

1. Distinctive Maternal Contributions to Social and Emotional Development

The distinctively maternal contributions to a child's social and emotional development are numerous and significant. Mothers are biologically primed to nurture their infant children and create a secure attachment relationship. Erickson, *supra*, at 6-7; *see also* Catherine Ruth Pakaluk and Joseph Price, *Are Mothers and Fathers Interchangeable? Parental Gender and Child Flourishing* 4 (2014), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534594 (noting that the evidence analyzed by the authors indicates that mothers have "a comparative advantage in the role of nurturer"). This is clearly due, at least in part, to the "nurturing hormone" oxytocin, which "promotes bonding and a calm, relaxed emotional state." Steven E. Rhoads, *Taking Sex Differences Seriously* 198 (2004). Oxytocin is "released in large quantities during pregnancy and breastfeeding[,]" which has been observed to result in generally "maternal behavior and a friendly demeanor." *Id.* (further noting that "[w]omen have more oxytocin receptors than men, and the number of receptors increases during pregnancy").

As the most frequent providers of care for infants, mothers' natural "ability to detect, interpret and respond in a positive, non-intrusive way to [their] infants' characteristics and needs" is vital to the development of emotionally secure attachment. Erickson, *supra*, at 8. Indeed, a mother's unique ability

to "sensitively modify the stimulation they give to their infants" allows them to interact in a way that matches their infant's changing emotional and intellectual states, providing their child with precisely the amount and level of interaction that is optimal for brain development at any given time. *Id.* at 8 (citing Allen N. Schore, *Affect Regulation and the Origin of the Self* 355 (1994)). This "maternal sensitivity" is vital to the formation of emotionally secure attachment. *Id.* And secure attachment predicts positive outcomes in a number of critical areas, including language development, frustration tolerance, self-recognition, behavior problems, and relations with peers, friends and siblings, to name a few. *Id.* at 7 (citing David F. Bjorklund and Ashley C. Jordan, *Human Parenting from an Evolutionary Perspective*, Gender and Parenthood 61, 71-72 (W. Bradford Wilcox and Kathleen Kovner Kline eds., 2012)). The uniquely sensitive, responsive, and consistent care that mothers provide their infants is thus foundational to a child's social and emotional development.

Mothers are also able to extract the maximum return on the temporal investments of both parents in a two-parent home because mothers provide critical direction for fathers on routine caretaking activities, particularly those involving infants and toddlers. *See* Sandra L. Hofferth, et al., *The Demography of Fathers: What Fathers Do*, in Handbook of Father Involvement: Multidisciplinary Perspectives 81 (Catherine Tamis-Lamonda and Natasha Cabrera eds., 2002); Scott Coltrane, *Family Man* 54 (1996). This direction is needed in part because fathers do not share equally in the biological and hormonal interconnectedness that

develops between a mother and a child during pregnancy, delivery, and lactation.

Mothers tend to do the majority of the important work of teaching children to understand their own feelings and respond to the feelings of others. They accomplish this crucial task in part by encouraging open discussion of feelings and emotions within the family unit. *See* Suzanne A. Denham, et al., *Prediction of Externalizing Behavior Problems From Early to Middle Childhood: The Role of Parental Socialization and Emotion Expression*, in Development and Psychopathology 23-45 (2000); Eleanor Maccoby, *The Two Sexes* 272 (1998).[2] In comparison to fathers, mothers generally maintain more frequent and open communication and enjoy greater emotional closeness with their children, fostering a sense of security in children with respect to the support offered by the family structure. Ross D. Parke, *Fatherhood* 7 (Developing Child Series, Jerome Bruner et al. eds., 1996) (hereafter "Parke, *Fatherhood*"). Mothers also impose more limits and tend to discipline more frequently, albeit with greater flexibility when compared with fathers, further cultivating emotional closeness and a sense of comfort. Maccoby, *supra*, at 273.

Children's sense of being comfortable in the world they inhabit is also fostered by mothers' typical mode

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[2] Professor Maccoby, a distinguished feminist psychologist at Stanford University who championed the idea that sex differences were caused only by socialization, is now acknowledging the importance of biology in explaining sex differences in parenting. Maccoby, *supra*, at 314.

of parent-child play, which is uniquely interactive, predictable, and geared toward joint problem-solving. *See* Maccoby, *supra*, at 266-67; *see also* Parke, *Fatherhood*, at 5. Indeed, "across all stages of a child's development mothers emerge as the preferred source of comfort in times of stress." Erickson, *supra*, at 9 (internal quotation marks omitted). In the process of providing comfort and care as well as play, mothers label and discuss their children's emotions, building children's capacity to identify and express their own emotions. *Id.* Research has consistently shown that mothers have a "unique capacity to facilitate conversations about feelings, listen carefully to feelings, offer encouragement, and ask questions to elicit sharing of feelings." Jenet Jacob Erickson, *Why Mothers Matter*, MercatorNet (May 24, 2011), *available at* http://www.mercatornet.com/articles/view/why_mothers_matter. The fact that women are generally better able than men to both regulate emotions and express emotions (with the exception of anger) gives them a relatively greater capacity for nurturing and aids mothers in the task of developing children's emotional awareness. *Id.* (citing Bjorklund and Jordan, *supra*, at 68).

In light of mothers' dominant role in developing a child's emotional awareness, it should come as no surprise that, in general, mothers also play the principal role in fostering a child's awareness of the emotions of others—the capacity for empathy—which develops "[t]hrough the attachment process and its associated maternal sensitivity." Erickson, *supra*, at 9. Development of the capacity for emotional awareness and empathy is especially critical to social and emotional development because it provides children

with the "moral awareness and responsibility that forms the underpinnings of their moral behavior beyond infancy." *Id.* That is, the unique parenting contributions that mothers make to their children's ability to identify, express, regulate, understand, and process emotions provides the foundation for an individual's moral compass and conscience—the capacity to distinguish between right and wrong, and to choose to do good.

Mothers' critically important and unique contributions to emotional development also help children form meaningful social relationships. Mothers play a central role in connecting children to friends and extended family, and active maternal influence and input is vital to both the breadth and depth of children's relationships. Paul R. Amato, *More Than Money? Men's Contributions to Their Children's Lives?*, in Men in Families, When Do They Get Involved? What Difference Does It Make? 267 (Alan Booth and Ann C. Crouter eds., 1998). Mothers' relatively greater capacity for emotional expression and regulation, *see, e.g.,* Bjorklund and Jordan, *supra*, at 68, likely aids them in helping their children understand their friends and thus form and maintain healthy friendships. The distinctive contributions that mothers tend to make with respect to the connectedness of the family and the quality of a child's relationships in turn allow the child to understand her identity as a part of her immediate family and in relation to grandparents, aunts, uncles, cousins, and other relatives.

A mother plays a vital role in the development of a male child's identity and ability to relate to members of the opposite sex. In particular, research shows that

mothers enable their sons to "play the role of a loving boy [and] man[.]" Erickson, *supra*, at 19 (quoting Barbara K. Eisold, *Recreating Mother: The Consolidation of "Heterosexual" Gender Identification in the Young Son of Homosexual Men*, 68 Am. J. of Orthopsychiatry 433 (1998)). The need for a mother to play this role appears to be innate and intrinsically related to identity formation in male offspring, as demonstrated by Psychiatrist Barbara Eisold's recount of the psychotherapy treatment of Nick, a four-and-one-half-year-old boy raised by a male same-sex couple. Erickson, *supra*, at 19; Eisold, *supra*. Nick received psychotherapy to deal with the loss of his first babysitter, who Nick viewed as a mother figure, but whose employment was terminated when Nick was two years old. Erickson, *supra*, at 19. Following the loss of his babysitter, Nick was "often beside himself with anxiety. He wanted desperately to be liked by other children and by [his teacher]. [But] [h]e was not certain about what would make him likeable." *Id.* (quoting Eisold, *supra*). Though Nick had been raised by two men, he yearned for a maternal relationship: he "seemed to need to construct a mother . . " Erickson, *supra*, at 19 (quoting Eisold, *supra*). More specifically, innate forces of child development "demand[ed] that [Nick] psychologically reconstruct 'Mommy' in order to make sense of his identity and wholeness as an individual." Erickson, *supra*, at 19. As the story of young Nick's identity crisis plainly demonstrates, male children have an innate need to understand what it means to be a boy and a man, and the presence and care of a loving mother is critical in fulfilling that need.

2. Distinctive Paternal Contributions to Social and Emotional Development

Fathers also make distinctive and critical contributions to childrearing. Positive paternal contributions play a key role in avoiding a variety of negative outcomes that arise with greater frequency in homes where a father is not present. Having a father in the home is associated with an increase in positive outcomes for children in domains such as education, physical health, and the avoidance of juvenile delinquency. Erickson, *supra*, at 10 (noting that many studies show that infants, children, and young adults are all positively affected by involved and caring fathers (quoting David J. Eggebeen, *Do Fathers Matter for Adolescent Well-Being*, in Gender and Parenthood 249 (W. Bradford Wilcox and Kathleen Kovner Kline eds., 2012))); *see also* Sara McLanahan and Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* 1-3 (1994). As the late Professor Norval Glenn has explained, "there are strong theoretical reasons for believing that both fathers and mothers are important, and the huge amount of evidence of relatively poor average outcomes among fatherless children makes it seem unlikely that these outcomes are solely the result of the correlates of fatherlessness and not of fatherlessness itself." Norval D. Glenn, *The Struggle for Same-Sex Marriage*, 41 Soc'y 25, 27 (2004).

Fathers play a particularly important role in helping children develop the ability to form quality relationships with persons outside the family. While mothers "facilitate foundational identity formation," it appears that fathers "orient children in their

relationships with others." Erickson, *supra*, at 12. Compared to mothers, fathers generally spend a greater portion of their parenting time engaged in or supervising play activities, which "seems to particularly facilitate the capacity to form healthy peer relationships." *Id.* (citing Ross D. Parke, *Gender Differences and Similarities in Parental Behavior*, in Gender and Parenthood 127 (W. Bradford Wilcox and Kathleen Kovner Kline eds. 2012) (hereafter "Parke, *Gender*")). Fathers' style of play also differs from that of mothers. In particular, fathers tend to "produce[] staccato bursts of stimulation," and they generally engage in play that is more "physically stimulating and unpredictable . . " Charlie Lewis and Michael E. Lamb, *Fathers' Influences on Children's Development: The Evidence from Two-Parent Families,* 18 European J. of Psych. and Education 211, 213 (2003) (citations omitted). Fathers also tend to "tease their children[,]" which has "disruptive effects," teaching children to deal with and even embrace the unexpected. *Id.* (citation omitted). Fathers also engage proactively in spontaneous play with their children, and "children who roughhouse with their fathers . quickly learn that biting, kicking, and other forms of physical violence are not acceptable." Popenoe, *supra*, at 144. Studies have shown that fathers' stimulating, unpredictable style of play "facilitates the development of emotional regulation, and knowledge of and use of emotional display norms, which influence children's social acceptance." Erickson, *supra*, at 12.

Fathers also tend to utilize a different discipline style than mothers, in that they discipline with less frequency, but greater predictability and less flexibility in terms of deviating from pre-determined

consequences for particular behavior. *See* Thomas G. Powers, et al., *Compliance and Self-Assertion: Young Children's Responses to Mothers Versus Fathers*, 30 Dev. Psychol. 980, 980-89 (1994); Erickson, *supra*, at 11. Children respond differently to paternal discipline, and are comparatively more likely to resist maternal commands and comply with paternal requests. Maccoby, *supra*, at 274-75; Erickson, *supra*, at 11. This may be one reason why studies have found that paternal influence and involvement plays an outsized role in preventing adolescent boys from breaking the law. *See*, *e.g.*, Paul R. Amato and Fernando Rivera, *Paternal Involvement and Children's Behavior Problems*, 61 J. Marriage & Fam. 375, 375-84 (1999) (finding that paternal involvement is linked to lower levels of delinquency and criminal activity, even after controlling for maternal involvement). Studies have also "shown that dads have a more powerful influence than moms when it comes to convincing kids to steer clear of cigarettes and sex." Linda Carroll, *Dads Empower Kids to Take Chances*, NBC News (June 18, 2010), *available at* http://www.nbcnews.com/id/37741738/ns/health-childrens_helath/t/dads-empower-kids-take-chances.

Moreover, the involvement of a father is of overriding importance for the social and emotional development of adolescents. Studies have shown that closeness with one's father during adolescence is a "strong[] predictor of not engaging in anti-social behavior," and that close paternal involvement in the life of an adolescent explains a "unique proportion of variance in adolescent behavioral problems." Erickson, *supra*, at 11 (internal quotation marks omitted). Moreover, adolescents that engage in fewer activities

with their fathers tend to have significantly higher rates of "depression symptoms and delinquency." *Id.* (citing Eggebeen, *supra*).

For sons in particular, the presence of a biological father in the home has beneficial and protective effects. Substantial evidence from social science suggests that "the mere presence of a father in [a boy's] homes, irrespective of both direct father involvement and available economic resources," predicts "less delinquent behavior." Erickson, *supra*, at 11; *see also* Deborah A. Cobb-Clark and Erdal Tekin, *Father's and Youth's Delinquent Behavior*, National Bureau of Economic Research Working Paper 17507 (October 2011), *available at* http://www.nber.org/papers/w17507.pdf (concluding that "the sense of security generated by the presence of a male role model in a child's life has protective effects for the child irrespective of the degree of interaction between the child and the father").

The fact that boys' delinquency rates decrease with the presence of even a relatively uninvolved father in the home highlights the importance of living and growing up with a father from childbirth to adulthood, as opposed to simply having a relationship or engaging in activities with a father who resides outside the home.[3] A leading study of data generated by the

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[3] Of course, a father is more likely to be present in the home and involved in his child's life if married to his child's mother. *See* William J. Doherty et al., *Responsible Fathering*, 60 J. Marriage & Fam. 277, 290 (1998) (stating that "research strongly indicates that substantial barriers exist for men's fathering outside of a caring, committed, collaborative marriage" with his child's mother); McLanahan and Sandefur, *supra*, at 3 ("When a father lives in a separate household, he is usually less committed to his

National Longitudinal Study of Adolescent Health, which collected questionnaire responses from over 15,000 nationally representative adolescents in grades seven through twelve, found that "the total effect of living with a residential, biological father (as opposed to having no father figure at all)" for adolescent boys was an estimated "7.6 percentage point reduction in delinquent behavior." Cobb-Clark and Tekin, *supra*, at 21 (observing that the substantial impact of a biological father's presence in the home on adolescent boys' delinquent behavior did not differ significantly based on the level of the fathers' involvement). In contrast, while the involvement of a non-residential father in an adolescent boy's life also reduces the incidence of delinquent behavior, the impact is much smaller, ranging from four percent to five percent. *Id.* at 20.

The higher rate of delinquent behavior exhibited by adolescent boys who do not live with their fathers likely stems from continual paternal contact and observation on a day-to-day basis. Boys who do not regularly experience the discipline, modeling, and love of a father are more likely to engage in what is called "compensatory masculinity" where they reject and denigrate all that is feminine and instead seek to prove their masculinity by engaging in domineering and violent behavior. Popenoe, *supra*, at 157. The regular presence of a father in the home during a boy's childhood and adolescence also reduces the risk that men will engage in delinquent or criminal activity in adulthood. Cobb-Clark and Tekin, *supra*, at 24 ("The results demonstrate the enduring link between living

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child and less trusting of the child's mother. Hence he is less willing to invest time and money in the child's welfare.").

with one's biological father and a reduced tendency for men to engage in delinquent behavior even in adulthood").

Girls also benefit from the presence and involvement of fathers in their lives. In particular, involved parenting by a biological father increases the age at which a girl engages in sexual activity and delays the onset of puberty, thus significantly reducing the odds that a teenage girl will become pregnant. Mark D. Regnerus and Laura B. Luchies, *The Parent-Child Relationship and Opportunities for Adolescents' First Sex*, 27 J. Fam. Issues 159, 159-83 (2006) (noting that a study of 2000 adolescents showed that a father-daughter relationship, rather than a mother-daughter relationship, was an important predictor of whether and when adolescent girls transitioned to sexual activity); *see also* W. Bradford Wilcox, et al., *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*, 14, 22-23 (3d ed. 2011) (discussing evidence suggesting that female sexual development is slowed by early childhood exposure to pheromones of a biological father, and accelerated by regular early childhood exposure to pheromones of an adult male who is not the child's biological father). Involved fathers also play an important role in "encourag[ing] acceptance of one's mind, body, and personality" and help "foster a positive body image." D. Wayne Matthews, *Fathers Make a Difference*, North Carolina Cooperative Extension Service Publication (2003), *available at* http://www.ces.ncsu.edu/depts/fcs/pdfs/Fcs-509.pdf. The presence and involvement of fathers in the lives of their daughters thus may have important implications for building self-esteem and preventing eating disorders. *See* Margo Maine, *Father Hunger*

and Eating Disorders, Eating Disorders: A Reference Sourcebook 37, 40 (1999) (discussing how girls' innate "hunger" to "feel close and connected with their dads" can, if left unsatisfied, "grow[] into self-doubt, pain, anxiety, depression, and low self-worth," which often leads to "self-punitive feelings" such as "feeling unworthy of food or wanting to please others by losing weight or having a 'perfect' body").

B. Distinctive and Complementary Maternal and Paternal Parenting Contributions Are Important to the Cognitive Development of Children.

1. Distinctive Maternal Contributions to Cognitive Development

In addition to fostering children's social and emotional development in unique ways, mothers and fathers make distinctive and complementary contributions to the cognitive development of their children, contributions best made when parenting jointly within the same household.

Maternal contributions to the cognitive development of children are foundational. As previously discussed, the natural biological responsiveness of a mother to her infant fosters critical aspects of neural development and capabilities for interactivity in the infant brain.[4] In

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[4] *See* Charles A. Nelson and Michelle Bosquet, *Neurobiology of Fetal and Infant Development: Implications for Infant Mental Health*, in Handbook of Infant Mental Health 37-59 (Charles H. Zeanah Jr. ed., 2000); Marianne S. De Wolff and Marines H. van Ijzendoorn, *Sensitivity and Attachment: A Meta-Analysis on Parental Antecedents of Infant Attachment*, 68 Child Dev. 571, 571-

addition, years of research demonstrate a "correlation between breastfeeding and brain development." Erickson, *supra*, at 14. Only in recent years has more sophisticated research revealed the reason for this correlation: mothers who breastfeed are "more likely to engage in the behaviors that enhance brain development," including "consistent exposure to language through reading" and "attention to emotional cues." *Id.*

The relationship between cognitive development and maternally sensitive interactions may also be one reason why mothers "tend to engage in more teaching-oriented, didactic interactions with children than fathers." *Id.* (citing Parke, *Gender*). Mothers' general inclination to a teaching orientation has "important implications for cognitive development, including memory, problem-solving, and language advancement." Erickson, *supra*, at 14.

Compared to fathers, mothers also play a uniquely significant and relatively more important role in cultivating the language and communication skills of their children. Parke, *Fatherhood*, at 6. In general, mothers are "more verbal in their interactions compared to fathers[,]" which helps develop children's conceptual capacity. Erickson, *supra*, at 14. This is especially important in the early months and years of a child's life, when children are less able (or, in the case of infants, entirely unable) to seek out their own

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91 (1997); Mary Main and Judith Solomon, *Discovery of an Insecure-Disorganized Disoriented Attachment Pattern*, in Affective Development in Infancy 95, 95-124 (T. Berry Brazelton and M. Yogman eds., 1986).

stimulating experiences and are entirely dependent on their caregivers. Mothers are "biologically and psychologically primed" to provide just the right kind of "[e]motionally sensitive, cognitively stimulating interactions during the critical period of infancy," shaping a child's ability for cognitive functioning for the rest of her life. *Id.* at 15.

2. Distinctive Paternal Contributions to Cognitive Development

Fathers contribute to their children's cognitive development in unique and important ways that complement the distinctive contributions of mothers. Fathers' characteristic mode of play is especially important in this regard. A study conducted by developmental psychologist Daniel Paquette found that while mothers tend to control play to ensure safety, fathers are more likely to refrain from intervening in the child's activities, a pattern that stimulates "exploration, controlled risk-taking, and competition." Daniel Paquette and Mark Bigras, *The Risky Situation: A Procedure for Assessing the Father-Child Activation Relationship*, 180 Early Childhood Dev. & Care 33, 33-50 (2010). Moreover, the type of physical play in which fathers tend to engage is "characterized by arousal, excitement, and unpredictability." Parke, *Gender*, at 127. Fathers' play is thus generally "destabilizing" in its orientation, which appears to help stimulate a child's "openness to the world." Erickson, *supra*, at 16 (quoting Rob Plakovitz, *Gendered parenting's Implications for Children's Well-being: Theory and Research in Applied Perspective*, in Gender and Parenthood 215, 226 (W. Bradford Wilcox and Kathleen Kovner Kline eds., 2012)).

Paternal modes of play activity are only one example of the ways in which fathers promote independence and teach their children to take controlled risks. Compared to mothers, fathers are more likely to encourage children to try new things and embrace novel situations and challenges. *See* Parke, *Fatherhood*, at 6. Studies show that "dads empower their kids, giving them the impetus to go out to explore the world, to meet new people, and to take chances." Carroll, *supra*. Fathers consistently "focus on helping children learn to do things independently and find solutions to their problems." Erickson, *supra*, at 16. In general, fathers also have a natural aptitude for "letting go" in ways that mothers do not—a "strategic form of nurturing" that fosters independence. *Id.* The typical supervisory-play style of fathers, their tendency to discipline less frequently, and their focus on facilitating self-reliance foster a sense of independence and confidence in children that helps them "learn to be braver in unfamiliar situations" and "stand up for themselves." *Id.*; *see also* Daniel Paquette, *Theorizing the Father-Child Relationship: Mechanisms and Developmental Outcomes*, 47 Human Development 193 (2004) (discussing the ways in which fathers encourage children to take risks while ensuring their security and promoting bravery and assertiveness).

Fathers' natural capacity to encourage healthy exploration and to inculcate the virtues of bravery and assertiveness has positive effects that "reach far beyond childhood." Carroll, *supra*. These positive effects extend to daughters as well as sons. A nine-year-old girl named Tara explains in clear terms how her dad helped her develop a sense of adventure: "I learned you should try new things even when you're

scared. When I get scared, my dad tells me not to worry, that you can't predict what's going to happen. So I try them and sometimes it feels scary, but fun at the same time." *Id.*

Research indicates that these paternal contributions, particularly those that foster controlled risk-taking and self-reliance, carry special importance for adolescents' cognitive development. One study summarized this aspect of paternal input and observed that "[f]athers, more than mothers, conveyed the feeling that they can rely on their adolescents, thus fathers might provide a 'facilitating environment' for adolescent attainment of differentiation from the family and consolidation of independence." Shmuel Shulman and Moshe M. Klein, *Distinctive Role of the Father in Adolescent Separation-Individuation*, 62 New Dir. Child & Adolesc. Dev. 41, 53 (1993). As children age, fathers also tend to focus less on physical play and instead engage in more verbal play, which often takes "the form of sarcasm, humor, and word play." Parke, *Gender*, at 128. A father's verbal play resembles that of an older child's peers while remaining "within the safety of [the] father-child relationship," Erickson, supra, at 17, which helps adolescents in particular "develop their own sense of identity and autonomy." *Id.* (quoting Parke, *Gender*, at 128). Peer-like verbal play is thus another unique way in which fathers "facilitat[e] healthy differentiation and strengthen[] independence" in adolescents. Erickson, *supra*, at 17.

More generally, fathers appear to "matter more than mothers in children's expressive language development." *Id.* at 15. When interacting with their children, mothers tend to "simplify their language to

ensure understanding," whereas fathers tend to "use a broader vocabulary with more unique words." *Id.* This has "important implications for language development." *Id.* By expanding their vocabularies, fathers enlarge the capacity of children (and adolescents in particular) to express their opinions and emotions, further enabling them to form an independent sense of self and differentiate themselves from family and friends.

This involvement of fathers in the lives of adolescents predicts not only "better verbal skills," but also higher "intellectual functioning, and academic achievement." Erickson, *supra*, at 15. Fathers tend to push their children to demonstrate their mastery of skills and learning, whereas mothers generally "reach in" and provide assistance. *Id.* at 17. Fathers also use more "cognitively demanding" speech, such as "open-ended questions, requests for explanations, directives, and explanations that foster the reconstruction of ideas as well as the ability to think about the past and future." Campbell Leaper, *Parenting Boys and Girls*, in Handbook of Parenting, Volume I: Children and Parenting 189, 197 (2002). Fathers' tendency to use more cognitively demanding speech "may prepare children for interacting with unfamiliar adults in outside environments such as school." *Id.*

Together with the tendency to use cognitively demanding speech, several other unique parenting contributions typical of fathers give them an outsized influence on their children's educational attainment and academic achievement. To begin with, the categories of social-emotional development that fathers uniquely foster (including, as discussed above, the

ability to form healthy peer relationships and avoid delinquent behaviors) also "facilitates academic readiness." Erickson, *supra*, at 15; *see also* Linda Nielsen, *Father-Daughter Relationships: Contemporary Research and Issues* 86 (2012) ("In elementary school, daughters tend to be more well behaved in class and with their peers when they have good relationships with their fathers"). In addition, fathers are "more likely to monitor and guide children's behaviors," which may help them avoid conduct that interferes with performance at school. Erickson, *supra*, at 16. Fathers also tend to "help with homework and provide advice or knowledge that helps children excel in school." *Id.* And fathers typically foster an "authoritative family environment," "characterized by an appropriate mix of engagement, affection, and supervision," that is "generally conducive to learning." W. Bradford Wilcox, *Dad and the Diploma: The Difference Fathers Make for College Graduation*, American Enterprise Institute (April 22, 2014), *available at* http://www.aei.org/publication/dad-and-the-diploma-the-difference-fathers-make-for-college-graduation (analyzing fathers' contributions to their children's educational and academic achievement, and finding that "young adults with involved fathers were at least 98 percent more likely to graduate from college" compared to peers without involved fathers).

In sum, substantial and compelling evidence from the social sciences demonstrates that both mothers and fathers make unique contributions to the social, emotional, and cognitive development of children. Mothers generally spend more time caring for infants and young children, and they have a natural capacity for interacting with their infant children in a way that

provides precisely the right amount stimulation required for the proper development of the infant's brain. Mothers also play a distinctive and important role in creating a strong attachment relationship with their children, which provides the emotional closeness and fundamental security necessary for identity formation. And mothers' natural capacity for emotional expression and regulation helps them in the critical work of fostering their children's emotional awareness and empathy, giving children the necessary foundation for moral behavior throughout their adult life.

The unique parenting contributions of fathers are different from those of mothers, but are likewise vital to a child's development. A wealth of evidence demonstrates that fathers, through stimulating, supervisory play and roughhousing, encourage openness to new situations and promote healthy risk-taking while teaching children to avoid violence and control aggression—key factors that enable children to form healthy relationships with their peers. Fathers' general tendency to use more cognitively demanding language and to require children to demonstrate skills and learning cultivates higher-level thinking and supports educational attainment and academic achievement. When interacting with their children, fathers have a propensity to use a broader vocabulary and to engage in peer-like verbal play that employs humor and sarcasm, which helps children utilize expressive language and helps adolescents relate to their peers and shape their sense of self. For boys, fathers also serve as role models. The mere presence of a father in the home significantly reduces the likelihood that boys will engage in delinquent behavior.

And for girls, an involved father reduces the likelihood of early sexual activity, enhances self-esteem, and reduces the risk of eating disorders.

C. The Man-Woman Definition of Marriage Promotes Mother-Father Parenting and Thereby Provides a Rational and Even Compelling Justification for the Laws at Issue Here.

Promoting man-woman marriage necessarily creates "the optimal situation for the child [which] is to have both an involved mother and an involved father." *Bowen*, 483 U.S. at 614 (Brennan, J. dissenting). It is evident from the foregoing discussion that the distinctively maternal contributions to parenting have important features in common: a mother's contributions are indispensable to foundational development, and they have maximal developmental impact during a child's infancy and early years, when children are more dependent on the care of others for their survival. The unique contributions that mothers make to child development reflect the fact that, as previously discussed, mothers (i.e., women) are biologically primed to provide sensitive and nurturing care.

Similarly, the distinctive parenting strengths of fathers (i.e., men) also share common features. In general, a father's unique contributions are fundamental to the development of children's "pro-social, relational capacities." Erickson, *supra*, at 23. Fathers' contributions are particularly important to adolescents and older children, reflecting the fact that fathers' naturally facilitative parenting style aids the development of independence and self-reliance.

These features of maternal and paternal contributions to child development reveal a natural complementarity and "fit" between mothers' and fathers' parenting strengths that is surprisingly precise. Whereas mothers are biologically prepared to nurture, teach, and provide hands-on care that is especially important for the foundational development of newborns and young children, fathers are naturally predisposed to take a hands-off and facilitative approach to parenting, fostering self-reliance, achievement, and healthy peer relationships in ways that are particularly important for adolescents in their transition to adult life. The conclusion compelled by the evidence of social science is therefore clear: only the mother-father parenting structure fosters child development in a comprehensive, holistic manner, from birth to adulthood.

The importance of the mother-father parenting structure is underscored by the many large-sample studies demonstrating that children are most likely to achieve favorable outcomes on a number of indicators when they are raised by both their biological mother and their biological father in a stable home. *See, e.g.*, D. Paul Sullins, *Emotional Problems Among Children with Same-Sex Parents: Difference by Definition*, 7 Brit. J. of Educ., Soc'y & Behav. Sci. 99, 100 (2015) (noting that households with "[j]oint biological parents [are] associated with the lowest rate of child emotional problems"); Wendy D. Manning and Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. Marriage & Fam. 876, 890 (2003) ("Adolescents in married, two-biological-parent families generally fare better than children in any of the family types examined here, including

single-mother, cohabiting stepfather, and married stepfather families."); McLanahan and Sandefur, *supra*, at 1-3 (similar). Indeed, these studies show significant deficiencies, on average, for children raised in any other family structure across a wide range of outcomes, including emotional and psychological problems, behavioral problems, and academic challenges.

Parents in all kinds of family structures should be recognized for the contributions they make in their children's lives. This, however, does not diminish the legitimate interest of the State to exclusively recognize man-woman marriage due to the unique benefits of dual gender parenting. The overwhelming evidence of social science suggests that optimal childrearing requires the essential contributions that can only be found within a parenting structure that includes both a mother and a father. Therefore, it remains rational—and indeed compelling—for government to provide distinctive recognition and incentive to that proven parenting structure by continuing to define marriage exclusively as the union of a man and a woman.

Redefining marriage, moreover, would seriously erode the existing marital norm that encourages gender-diverse parenting. By itself, the fact that marriage is defined as the union of a man and a woman makes clear to society that marriage is really about procreation and children, and that it is expected to carry with it both a masculine and a feminine aspect. *See* Brief of Amici Curiae Marriage Scholars at 6-8 (and sources cited there). That, in turn, tends to reinforce the importance of gender-diverse parenting. *See id.*

Yet replacing the man-woman definition of marriage with the definition that is necessary to implement Petitioners' vision of marriage—i.e., a union of any two otherwise qualified persons of whatever gender—would directly undermine man-woman marriage's role in promoting gender-diverse parenting. *See* William N. Eskridge, Jr., *Gaylaw: Challenging Apartheid in the Closet* 11 (1999) (explaining that the redefinition of marriage "involves the reconfiguration of family" by, among other things, "de-emphasizing . gender"). Indeed, it would establish that gender diversity is no longer a valued part of family life—that neither the presence of a man nor the presence of a woman is considered important to family formation or the upbringing of children. Over time, that would likely lead to fewer children being raised by both a mother and a father, which, as discussed above, means that more children would be raised in suboptimal settings with corresponding negative consequences for children and society. *See generally* Brief of Amici Curiae Marriage Scholars.

For these reasons, a State can rationally decide to enact and then preserve the man-woman definition of marriage as the exclusive definition of marriage. Indeed, such a policy is more than rational—it is compelling. The State marriage laws at issue here therefore pass constitutional muster regardless of the level of scrutiny this Court were to apply. This Court has often held that distinctions based on genuine biological reality can generally withstand even heightened scrutiny. *See, e.g., Nguyen v. Immigration and Naturalization Service*, 533 U.S. 53, 65 (2001) (upholding a law that treated mothers and fathers differently because of "biological inevitability");

Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 469 (1981) (plurality opinion) (noting that because "the Equal Protection Clause does not demand that a statute necessarily apply equally to all persons or require things which are different in fact...to be treated in law as though they were the same, this Court has consistently upheld statutes where the gender classification...realistically reflects the fact that the sexes are not similarly situated in certain circumstances") (citations omitted); *see also*, Brief of Amici Curiae Marriage Scholars at 34-41.

Notably, a number of judges have concluded that man-woman marriage laws directly promote gender-diverse parenting and child welfare and thus satisfy constitutional scrutiny. In *Hernandez v. Robles*, 855 N.E.2d 1, 7 (N.Y. 2006), for example, New York's highest court explained:

> The Legislature could rationally believe that it is better, other things being equal, for children to grow up with both a mother and a father. Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like.

Id. Similarly, in *Robicheaux v. Caldwell*, 2 F. Supp. 3d 910 (E.D. La. 2014), the court concluded that "Louisiana's [man-woman marriage laws] are directly related to achieving marriage's historically preeminent purpose of linking children to their biological [mother and father]." *Id.* at 920. And in *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), Judge Kelly, concurring in part and dissenting in part, found:

> Consistent with the greatest good for the greatest number, the State could rationally and sincerely believe that children are best raised by two parents of opposite gender (including their biological parents) and that the present arrangement provides the best incentive for that outcome. Accordingly, the State could seek to preserve the clarity of what marriage represents and not extend it.

Id. at 1238-39 (Kelly, J., concurring in part and dissenting in part); *see also Bostic v. Schaefer*, 760 F.3d 352, 395 (4th Cir. 2014) (Niemeyer, J., dissenting). Indeed, the court below found that the inherent differences between opposite-sex couples and same-sex couples in relation to procreation and childrearing are more than sufficient to support a State's decision to maintain the exclusive definition of marriage as between a man and a woman. *DeBoer v. Snyder*, 772 F.3d 388, 404-06 (6th Cir. 2014). It should be obvious that "a meaning of what is marriage that has endured in history for thousands of years . is not universally irrational on the constitutional grid." *Robicheaux*, 2 F Supp. 3d at 920.

II. The Same Compelling Evidence that Provides a Rational and Compelling Basis for States to Define Marriage as the Union of One Man and One Woman Provides an Equally Rational and Compelling Basis for States to Decline to Recognize Out-of-State Same-Sex Marriages.

"By history and tradition the definition and regulation of marriage . has been treated as being within the authority and realm of the separate states." *United States v. Windsor*, 133 S. Ct. 2675, 2689-90

(2013). Provided that the constitutional rights of persons are protected, each State is sovereign in its decisions over marriage. *Id.* The constitutionally sound basis, demonstrated above, that permits a State to continue to exclusively define marriage as between one man and one woman equally permits that State to refuse to recognize marriages legally performed in other jurisdictions that do not comply with the State's marriage definition. *Conde-Vidal v. Garcia-Padilla*, -- F. Supp. 3d --, No. CIV. 14-1253 PG, 2014 WL 5361987, at *10-11 (D.P.R. Oct. 21, 2014); *Kitchen*, 755 F.3d at 1239 (Kelly, J., concurring in part and dissenting in part).

To require States to recognize as marriages relationships that violate their own marriage laws permits one State to dictate the marriage laws of the other forty-nine. People desiring to avail themselves of the benefits of another State's laws cannot be permitted to overrule the laws of the State where they choose to reside. The stakes of experimenting with the definition of marriage are too important to be taken hostage by a few.

Thus, for all the reasons that a State should not be forced to redefine marriage within its own borders, it should not be required to recognize same-sex marriages from other States.

CONCLUSION

Only a marriage between a man and a woman is capable of producing biological children of both spouses, creating a family of father, mother, and child. *Bostic*, 760 F.3d at 391 (Niemeyer, J., dissenting). While not all marriages between a man and a woman

will produce biological children, they all provide the potential for a child that enters those homes, either through natural conception, assisted reproduction, or adoption, to have the benefit of being raised by both a father and a mother. Popular culture has seen drastic changes in recent times. Yet the needs of children remain surprisingly constant, and the presence of both a mother and a father in the home continues to provide them with unique and irreplaceable benefits.

Given the significant evidence demonstrating that homes with both a mother and a father have the highest probability of optimal results for children, a state has a rational and even compelling basis for preferring this childrearing arrangement by continuing to recognize as marriages only those unions comprised of one man and one woman. Accordingly, Amici respectfully requests that this Court affirm the decision of the appellate court.

Respectfully submitted,

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